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8 UNITED STATES BANKRUPTCY COURT
9 FOR THE DISTRICT OF OREGON

10 In Re:) Bankruptcy Case
11 LEWIS EDWARD GRAHAM, II,) No. 07-62339-fra11
12 _____ Debtor.) MEMORANDUM OPINION

13
14 Grand Pacific Financing Corp. ("GPFC") filed a motion under §
15 362(j)¹ seeking an order confirming that the automatic stay of § 362(a)
16 has been terminated. At issue is the effect of an order terminating the
17 automatic stay under § 362(c)(3)(A), which provision was added as part of
18 the Bankruptcy Abuse Prevention and Consumer Protection Act ("BAPCPA").
19 GPFC and the Debtor filed memoranda arguing their respective positions. A
20 hearing was held on October 7, 2008, at the conclusion of which, the
21 matter was taken under advisement.

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26 ¹Unless otherwise indicated, all section references are to the
Bankruptcy Code at 11 U.S.C. §101 *et seq.*

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GPFC has filed two proofs of claim in this case: Claim #17 (amended) in the amount of \$4,095,524, secured by various real and personal property of the Debtor, and Claim #18 (amended) in the amount of \$1,588,872, also secured by real and personal property of the Debtor. The claims are based on personal guarantees made by the Debtor for loans made by GPFC. When Debtor filed bankruptcy, the Debtor's property securing GPFC's loans became property of Debtor's bankruptcy estate.

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1 statute as a whole. These courts find that the phrase "with respect to
2 the debtor," defines not the property for which stay protection is
3 terminated, but *which* debtor is affected by stay termination. The
4 example given is a joint bankruptcy case where only one of the co-debtors
5 had a case dismissed within the previous year. See *In re Jupiter* at 759-
6 60. The automatic stay would remain in place respecting the other co-
7 debtor.

8 Debtor, on the other hand, urges the Court to adopt the position
9 of the majority of courts confronted with this issue which holds that
10 there is no ambiguity in the statute, and that § 362(c)(3)(A) terminates
11 the stay with respect to the debtor and property of the debtor, but not
12 property of the estate. See e.g. *In re Jumpp*, 356 B.R. 789 (BAP 1st Cir.
13 2006), *In re Holcomb*, 380 B.R. 813 (BAP 10th Cir. 2008). As indicated in
14 *Holcomb*, these courts reason that if Congress meant to terminate the stay
15 in its entirety, it could have done so in plain language, as it did in §
16 362(c)(4)(A)(i)².

17 I find that the better approach is the one taken by the majority
18 of courts that have ruled on this issue, and hold that § 362(c)(3)(A)
19 terminates the automatic stay with respect to the debtor and property of
20 the debtor, but leaves the stay in place respecting property of the
21 estate. In making this holding, I adopt the rationale of the Panel in
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23 ²This section reads: "if a single or joint case is filed by or
24 against a debtor who is an individual under this title, and if 2 or more
25 single or joint cases of the debtor were pending within the previous year
26 but were dismissed . . . , the stay under subsection (a) shall not go
into effect upon the filing of the later case." This language clearly
refers to the automatic stay in its entirety. *In re Nelson*, 391 B.R. 437,
449 (9th Cir. BAP 2008).

1 *Holcomb* in finding that there is no ambiguity in the language of the
2 statute and that reading the statute in accordance with its plain meaning
3 is consistent with the policies of the Bankruptcy Code. *Holcomb* at 816.

4 "With Respect to Any Action Taken"

5 Section 362(c)(3)(A) terminates the stay at the end of the 30-day
6 period "with respect to any action taken" regarding a debt or property
7 securing such debt or regarding a lease. In *In re Paschal*, 337 B.R. 274
8 (Bankr. E.D.N.C. 2006), the court compared the term "act" found in
9 sections 362(a)(3), (a)(4), (a)(5), and (a)(6) with the term "action"
10 found in § 362(a)(1), in various subsections of § 362(b) and at §
11 362(c)(3)(C)(ii). From that comparison, it determined that the term
12 "action," as used in § 362(c)(3)(A) refers to a "formal action, such as a
13 judicial, administrative, governmental, quasi-judicial, or other
14 essentially formal activity or proceeding." Moreover, because the section
15 refers to "action taken," it follows that the action referred to must
16 have occurred pre-petition. *Id.* at 280. That the action must have been
17 taken pre-petition also follows from the fact that an action taken post-
18 petition (i.e. during the 30 days after the petition date when the
19 automatic stay is in effect) would be void *ab initio*. *In re Schwartz*, 954
20 F.2d 569 (9th Cir. 1992). The *Paschal* court concluded that §
21 362(c)(3)(A) terminates the automatic stay only with regard to an action
22 taken by a party prior to the petition date. *Paschal* at 280-81. The
23 holding in *Paschal* is well reasoned and is hereby adopted by this Court.

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